

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF CALIFORNIA

DONALD R. HUENE  
IN PROPRIA PERSONA  
7429 N. VALENTINE  
FRESNO, CA 93711  
(559) 431-1639

Plaintiff,

v.

U.S. DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
1111 CONSTITUTION AVENUE  
WASHINGTON, DC 20224

and

SIU CHAN and ANTHONY SHELLEY  
INTERNAL REVENUE SERVICE  
2525 CAPITOL STREET, SUITE 204  
FRESNO, CA 93721-2227

Defendants.

1:11CV 00920 AWI SKO

CASE NO:

COMPLAINT FOR DECLARATORY  
JUDGMENT AND FOR  
INJUNCTIVE RELIEF

**FILED**

JUN 08 2011

CLERK, U.S. DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

BY  DEPUTY CLERK

COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

1. This is an action under the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 (2009), for injunctive and other appropriate relief, seeking the release of Internal Revenue Service agency records requested by the plaintiff, Donald R. Huene from the Internal Revenue Service, United States Department of Treasury.

Jurisdiction and Venue

2. The Court has subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. § 552(a)(4)(B) (2009) and 5 U.S.C. § 552(a)(6)(C)(i) (2009). This Court also has

1 jurisdiction over this action pursuant to 28 U.S.C. § 1331 (2009). Venue is  
2 proper in the United States District Court for the Eastern District of  
3 California under U.S.C. § 552(a)(4)(B) (2009).  
4

5 Parties

6 3. Plaintiff Donald R. Huene is a private individual appearing in  
7 propria persona and is proceeding to obtain documents to assist in an  
8 Internal Revenue Service audit.

9 4. Defendant United States Department of the Treasury is an agency  
10 established by the Executive Branch of the United States Government. The  
11 Internal Revenue Service is an agency within the meaning of 5 U.S.C. §  
12 552(f)(1) (2009).

13 5. Siu Chan and Anthony Shelley are agents for the aforementioned  
14 agency, Internal Revenue Service and are in possession of many of the  
15 requested documents.

16 6. There are also other potential defendants who are agents of the  
17 aforementioned Internal Revenue Service whose responsibility is the  
18 supervision and direction of Siu Chan of the aforementioned Internal Revenue  
19 Service. The identity of these agents has been concealed from plaintiff.  
20 The plaintiff will amend seek leave of the Court to amend these pleadings  
21 when their identities have been determined.  
22

23 Facts

24 7. Defendant Internal Revenue Service has previously audited  
25 plaintiff on schedule F filings. Defendants have opted to renew this  
26 examination and have requested many documents including the previous 12 years  
27 of tax returns and other items which were already in their possession and are  
28 subject to a FOIA request.

1 On 21 March 2011, plaintiff formally requested all documents in their  
2 possession concerning plaintiff from previous tax filings including the  
3 previous 12 years of tax returns, the results of previous audits, and all  
4 documents and other instructions in their possession relating to the present  
5 audit. They were notified of the 20 day time deadline to respond pursuant to  
6 5 U.S.C. § (a)(6)(A)(i) and 552 U.S.C. (a)(6)(A)(ii) and U.S.C. 5 (a)(6)(C).

7 On 21 March 2011, plaintiff requested the identification of the  
8 supervisors and others that make decisions regarding release and  
9 identification of the previously requested information. This has not been  
10 responded to and has rather been ignored in its entirety.

11 On 23 March 2011, plaintiff again requested prompt response to their  
12 request. This was in response to a second letter from defendants.  
13 Plaintiff, in a letter of 6 April 2011, again requested identification of  
14 others that would be responsive to the FOIA request to avoid the need to  
15 supplement the USCD-EDCA originally-filed pleading. Plaintiff also noted  
16 that pursuant to 5 U.S.C. § 552 (a)(6)(A)(i) and 5 U.S.C. § 552 (a)(6)(A)(ii)  
17 the defendants had at that time extinguished over one-half of the statutorily  
18 prescribed 20 day time limit. The plaintiff again requested that defendants  
19 respond to the previous and hereinbefore mentioned FOIA request. Plaintiff  
20 granted an extension to June 6, 2011 (77 days after the original request) but  
21 has never received any of the requested documents.

22 The defendants failed to make a determination regarding plaintiff's  
23 FOIA request, failed to disclose any documents or any response whatsoever  
24 within the statutory 20 day time deadline pursuant to 5 U.S.C. § 552  
25 (a)(6)(A)(i) (2009) and 5 U.S.C. § 552 (a)(6)(A)(ii) (2009) and have failed  
26 to respond in any manner.

27 Count I

28 Violation of the FOIA: Failure to Comply with Statutory Deadline

1 8. Paragraph 1-8 are hereby incorporated by reference as set forth  
2 fully herein.

3 9. The defendant have violated the statutory deadline imposed by the  
4 FOIA including deadlines of 20 days as set forth under 5 U.S.C. § 552  
5 (a)(6)(A)(2009), 5 U.S.C. § 552 (a)(6)(A)(i) (2009) and 5 U.S.C. § 552  
6 (a)(6)(A)(ii)(2009).

7 10. Plaintiff is entitled to injunctive relief compelling the release  
8 and disclosure of all the requested documents.

9  
10 Requested Relief

11 WHEREFORE, plaintiff prays that this Court:

- 12 A. order defendants to conduct an adequate search for the agency  
13 records responsive to plaintiff's FOIA request with five working  
14 days of the date of the Court's order in this matter with such  
15 search including but not limited to all sites at which defendants  
16 maintain plaintiff's records.
- 17 B. order defendant to produce all responsive agency records within  
18 10 days of the Court's order in this matter.
- 19 C. award plaintiff its costs and reasonable attorney's fees incurred  
20 in this action pursuant to 5 U.S.C. § 552(a)(4)(E)(2009).
- 21 D. grant such and other further relief as the Court may deem just  
22 and proper.

23 Respectfully submitted,

24  
25 By: Donald R. Huene  
26 Donald R. Huene  
27 In Propria Persona  
28 7429 N. Valentine  
Fresno, CA 93711  
(559) 431-1639